THE HON'BLE MS JUSTICE G. ROHINI

Writ Petition No. 23824 of 1999

Date: 18.07.2007

Between:

M. Ravinder.

..... PETITIONER

AND

The Chief Controller of Defence Accounts (Pensions),
Draupadhighat, Allahabad, Uttar Pradesh and others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G. ROHINI

Writ Petition No. 23824 of 1999

Order:

The petitioner herein was enrolled in the Army Medical Corps on 27.06.1988. He underwent periodical medical examinations from time to time as required under the service rules. While so, in the medical examination held in the month of September 1989, the petitioner was found to be medically unfit to continue in the Army service. The Medical Board assessed the disability of the petitioner at 100 percent, and accordingly recommended for his medical invalidation from service with all disability benefits. Pursuant thereto, the petitioner was discharged from service with effect from 22.12.1989 and his pension claim was forwarded to the Pension Sanctioning Authority, the 1st respondent herein. The

1st respondent while certifying that the petitioner's disability was attributable to military service, granted service pension for life and disability pension initially for one year. The said order was communicated to the petitioner by the 3rd respondent, vide letter dated 05.11.1990. Subsequently, the disability pension was extended from time to time.

While so, the Government of India, vide memo dated 31.12.1979 directed all the concerned that the disabled Ex-Servicemen shall be given first priority over all other categories for their re-employment in the

Central Government Departments. There was also a direction to reserve 14 ½ percent vacancies in Group-C posts and 20 percent vacancies in Group-D posts for Ex-Servicemen category. In pursuance thereof, the 3rd respondent forwarded the service particulars of the petitioner to the 2nd respondent – Zilla Sainik Welfare Officer, Karimnagar, with a request to register the name of the petitioner for extending the benefits applicable to the disabled Ex-Servicemen. However, the 2nd respondent did not consider the petitioner's name in spite of several representations made by him. It is alleged that the 2nd respondent did not even issue the Ex-Servicemen identity card to the petitioner, without there being any justifiable reason. The said inaction on the part of the 2nd respondent deprived the petitioner of all the benefits/concessions granted by the Government and Government agencies to the Ex-Servicemen. Hence, this writ petition seeking a declaration that the action of the 2nd respondent in not registering the petitioner's name under disabled Ex-Servicemen category, as arbitrary, illegal and discriminatory.

A counter affidavit has been filed by the 2nd respondent stating that the petitioner has not served in the Army in any capacity/rank and that he has not completed the period of required training. It is stated that during the course of training itself he was discharged, having found unfit to continue the training. Thus, not being attested to the Army, he is not a regular Soldier of the Army. It is contended that only the regular soldiers, who were attested to Army, on completion of successful training, are eligible to be treated as Ex-Servicemen after release/discharge from the Army.

In the reply affidavit filed by the petitioner it is stated that he was enrolled in the Indian Army on 27.06.1988 to serve for a period of 20 years and he was also sent for basic training and on successful completion of the said training, he was given annual leave for a period of four weeks. On completion of leave, he was sent on job training in the 1st week of February 1989. But, unfortunately he fell sick and eventually he was discharged from service with effect from 22.11.1989 based on the recommendations of the Medical Board with all pensionary benefits as applicable to the permanent members of the Armed Forces. It is contended that since it was held by the competent authority that the disease was attributable to military service and that he was discharged prematurely from service granting service pension for life, as applicable to the members of the Armed Forces as well as cent percent disability pension from 22.11.1989 itself, it is clear that for all practical purposes, the petitioner was treated as Sepoy by the 1st respondent – Pension Sanctioning Authority, and therefore, he cannot be denied the status of Ex-Serviceman.

I have heard the learned counsel for both the parties and perused the material on record.

May be that the petitioner was granted service pension and disability pension by the 1st respondent in accordance with the Service Regulations. However, the benefits claimed by the petitioner through the 2nd respondent – Zilla Sainik Welfare Officer, Karimnagar, are under a different scheme, governed by specific guidelines issued from time to time. The material placed before this Court by the learned counsel for the respondents makes it clear that under the said scheme “Ex-

Servicemen" include only the retired defence service personnel. In other words those who have served in any rank in the Armed Forces of the Union of India are eligible for consideration under the scheme. The said fact has also been clarified by the Ministry of Defence in its letter dated 27th November, 1995 stating that a recruit is not a rank and therefore such a pension is not eligible to the status of Ex-Servicemen even if he is receiving disability or any other pensionary benefits.

Hence, I am unable to hold that the action of the 2nd respondent in not enrolling the petitioner in the Ex-Servicemen Category for the purpose of extending certain benefits under the Scheme is either arbitrary or illegal.

Accordingly, the writ petition, which is devoid of merit, is hereby dismissed. No costs.

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G. ROHINI, J.

Date: 18.07.2007
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